

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, REPEALING ORDINANCE NOS. 90-11-02 AND 01-04-31; ESTABLISHING A RECORD MANAGEMENT PROGRAM; DESIGNATING A RECORDS MANAGEMENT OFFICER; PROVIDING FOR THE OWNERSHIP, RESPONSIBILITIES, MICROGRAPHICS, IMAGING, DESTRUCTION, AND DISPOSITION OF CITY RECORDS; ADOPTING A RECORD RETENTION SCHEDULE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR THE PUBLICATION AND AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, Title 6, Subtitle C, Texas Local Government Code (“Local Government Records Act”) provides that a municipality must establish by ordinance an active and continuing Records Management Program to be administered by a Records Management Officer; and

WHEREAS, the City Council of the City of Frisco, Texas (“City Council”) has investigated and determined that the City of Frisco, Texas (“City”) needs to amend the City Records Management Program to be administered by the City Secretary as the Records Management Officer of the City; and

WHEREAS, as the City amends the Records Management Program, the City desires to update current policies and amend the ordinance to provide policies and procedures consistent with the Local Government Records Act in the interest of cost-effective and efficient record keeping; and

WHEREAS, in order to best amend the Records Management Program, the City Council has investigated and determined that it is in the best interests of the City to repeal Ordinance Nos. 90-11-02 and 01-04-31 and adopt this Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance, as if fully set forth herein.

SECTION 2: Ordinance Nos. 90-11-02 and 01-04-31 Repealed. City Ordinance Nos. 90-11-02 and 01-04-31 are repealed in their entirety and replaced by this Ordinance. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance at which time Ordinance Nos. 90-11-02 and 01-04-31 shall be repealed. Such repeal shall not abate any pending prosecution and/or lawsuit or prevent any prosecution and/or lawsuit from being commenced for any violation of Ordinance Nos. 90-11-02 and 01-04-31 occurring before the effective date of this Ordinance.

SECTION 3: Title and Purpose. This Ordinance shall be known and may be cited as the “Records Management Ordinance of the City of Frisco, Texas,” providing for the proper and efficient management of the municipal records of the City. It is the policy of the City to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and

disposition of all municipal records through a comprehensive system of integrated procedures for their management from creation to ultimate disposition, consistent with the requirements of the Texas Local Government Records Act and standard records management practice. The process for managing records in the City shall be called the Records Management Program.

SECTION 4: Definitions.

- (1) "City" means the City of Frisco, Texas.
- (2) "City Auditor" means the certified public accountant hired by the City to perform audits upon request by the City.
- (3) "City Personnel" means other employees of the City designated, according to the Records Management Program, with additional duties pursuant to records management.
- (4) "City records" or "record" means all documents, papers, electronic mail, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information recording media, regardless of physical form or characteristic and regardless of whether public access to them is open or restricted under the laws of the state, created or received by the City of Frisco, Texas, or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:
 - a. Extra identical copies of documents created only for convenience of reference of research by officers or employees of the City;
 - b. Notes, journals, diaries, and similar documents created by an officer or employee of the City for the officer's or employee's personal convenience;
 - c. Blank forms;
 - d. Stocks of publications;
 - e. Library and museum materials acquired solely for the purposes of reference or display;
 - f. Copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552, Government Code or other state law; and
 - g. Any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Section 2009.054(c), Government Code, associated with the City's participation as a party, facilitation as an impartial third party, or facilitation as the administrator of a dispute resolution system or organization.
- (5) "Department Head" means the officer who by ordinance or administrative policy is in charge of a department of the City that creates or receives records.
- (6) "Essential or Vital Record" means any record of the City necessary for the resumption or continuation of the City's operations in an emergency or disaster, to the re-creation of its legal and financial status, or to the protection and fulfillment of obligations to the citizens of the City.
- (7) "Legal Hold" means a hold in the destruction of a City record involved in a pending request under the Texas Public Information Act, pending litigation, the anticipation of litigation, or a pending audit, even if the destruction of the City record is authorized by the Records Retention Schedule.
- (8) "Local Government Records Act" means Title 6, Subtitle C of the Local Government Code, as amended.

- (9) "Permanent Record" means any record of the City for which the retention period on a records retention schedule is given as permanent.
- (10) "Records Liaison" means person(s) designated by Department Head to apply records management to departmental records.
- (11) "Records Management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records retention schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.
- (12) "Records Management Officer" is the person designated to oversee the operations of "Records Management."
- (13) "Records Management Program" means the program ("Program") developed as required by Section 203.026, Texas Local Government Code, to provide methods and procedures to enable the City Council and City Secretary to fulfill duties required by law, identify records series for each department, storage location and associated retention period and destruction, as amended and maintained by the City Secretary.
- (14) "Records Retention Schedule" means a document issued by the Texas State Library and Archives Commission under authority of Subchapter J, Chapter 441, Government Code, establishing mandatory retention periods for City records.
- (15) "Retention Period" means the minimum time that must pass after the record lifecycle completion including creation, recording, receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

SECTION 5: Municipal Records Declared Public Property. All City records are declared to be the property of the City. No City official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited. A City record exempted from public disclosure under state or federal law is not made subject to disclosure by its designation as City property under this section.

SECTION 6: Designation of Records Management Officer. The City Secretary shall be designated as the Records Management Officer for the City. In the event of the resignation, retirement dismissal or removal of the City Secretary, the position of City Secretary shall be re-filled as provided by the City Charter, and that person shall be the Records Management Officer for the City. As provided by state law, each successive holder of the office of "Records Management Officer" shall file his or her name with the director and librarian of the Texas State Library and Archives Commission within thirty (30) days of the initial designation or of taking up the office, as applicable. As the designated Records Management Officer, the City Secretary shall oversee the operations of the Records Management Office and give direction and executive support to ensure the integrity and disposition of City records.

SECTION 7: Records Management Program to be Developed; Approval of Program; Authority of Program.

- (1) The Records Management Office under the direction of the City Secretary shall develop a Records Management Program for the City. The Program must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the City, properly preserve those records of the City that are of historical value and comply with applicable state law. The Program must be designed to enable the Records Management Officer to effectively carry out the duties prescribed by state law and this Ordinance.
- (2) Once created, the Program shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the City and records shall be created, maintained, stored, microfilmed, or disposed of in accordance with the Program, as amended.
- (3) The Program shall:
 - a. Adequately protect the essential records of the City;
 - b. Reduce the cost and improve the efficiency of record-keeping;
 - c. Enable the Records Management Officer to perform the duties prescribed by this Ordinance;
 - d. Identify the duties and responsibilities of the Records Management Officer;
 - e. Identify the duties and responsibilities of the Records Management Office;
 - f. Designate City personnel to assist the Records Management Office in carrying out the purposes of this Ordinance and the Program;
 - g. Establish criteria for City-wide and departmental records management compliance, including requirements for conducting departmental records inventories, preparing retention and disposition schedules, and certifying retention and disposition schedules and electronic recordkeeping systems;
 - h. Create policies to address records management requirements and needs as technology evolves; and
 - i. Preserve City records that are of historical value.
- (4) State law relating to the duties, other responsibilities, or recordkeeping requirements of City employees do not exempt the City employees or the records in the City employee's care from the application of this Ordinance and the Program adopted pursuant to it, and may not be used by the City employee as a basis for refusal to participate in the Program of the City.

SECTION 8: Records Management Office Established. The City Secretary's Office shall be the Records Management Office for the City. The Program shall establish the duties and responsibilities of the Records Management Office.

SECTION 9: Additional City Personnel. The City Secretary and Records Management Office may designate additional City Personnel to assist in the duties and requirements established by the Records Management Program, this Ordinance and state law.

SECTION 10: "Legal Hold" of Records. The "legal hold" of a record is a process to provide for the preservation of records involved in reasonably anticipated, present and/or future

litigation, public information requests, pending audits or any other legal process in compliance with federal and state regulations, even if the destruction of the City record is authorized by the records retention schedule. Any personnel aware of the possibility of litigation, threat of litigation, a public information request or other legal action, must immediately notify the City Secretary. The City Secretary, or designee, in coordination with the City Attorney's office, will determine the necessity of the legal hold on City records.

- (1) The City Secretary, in coordination with Records Management Office, will initiate legal holds on all associated records by notifying affected City Personnel, employees or officials in writing, including the subject and confirmation of the legal hold. The notice will inform affected personnel of their obligation to identify and preserve all records and evidence that may be relevant to the legal hold regardless of the form of the record.
- (2) Upon receipt of "Legal Hold Notification", City employees or officials must:
 - (a) Immediately suspend the release, deletion, overriding, or any other destruction of records relevant to the legal hold, without written approval from the City Secretary's office.
 - (b) Acknowledge receipt, understanding and compliance with a legal hold without undue delay by responding in writing to the City Secretary.
 - (c) Contact the Records Management Office for assistance in securing and preserving the records.
- (3) The City Secretary, in coordination with the Records Management Office will determine and communicate when a legal hold may be lifted and the record(s) no longer need(s) to be preserved.

SECTION 11: Adopted Records Retention Schedules. The City Council hereby adopts the Texas State Library and Archives Commission Records Retention Schedules for Local Governments.

SECTION 12: Implementation of Records Retention Schedules; Destruction of Records Under Schedule.

- (1) A records retention schedule for a department that has been approved and adopted by the City Council shall be implemented and followed by City Personnel and other City staff according to the policies and procedures of the Program.
- (2) Periodic audits will be conducted by the Records Management Office to ensure compliance with records retention schedules issued by the state and that the schedule continues to reflect the recordkeeping procedures and needs of the City.
- (3) Prior to the destruction of a record under an approved records retention schedule, authorization for destruction must be approved by the department head and the Records Management Officer.
- (4) Destruction of records will be maintained by the Records Management Office.

SECTION 13: Destruction of Unscheduled Records. A record that has not yet been listed on an approved records retention schedule may only be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the Records Management Officer has submitted to and received back from the director and librarian of the Texas State Library and Archives Commission an approved destruction authorization request.

SECTION 14: Electronic Storage of City Records. The creation, maintenance, preservation, electronic document imaging, and storage of the electronic records of the City must comply with the Records Management Program, this Ordinance and state law.

SECTION 15: Right of Recovery. The City may demand and receive from any person any City record in private possession that was created or received by the City, the removal of which was not authorized by law.

SECTION 16. Penalty Provision. Any person, firm, entity or corporation who violates any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Five Hundred Dollars (\$500.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 17: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 18: Effective Date. This Ordinance shall become effective immediately upon its adoption and publication as required by the City Charter and by law.


DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO TEXAS, on this the ____ day of _____, 2010.

Maher Maso, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED BY:**

Jenny Page, City Secretary

APPROVED AS TO FORM:



Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

Date(s) of Publication: _____, Frisco Enterprise